

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEPHEN F. GORDON,
an individual,

Plaintiff,

vs.

HONORABLE JOHN CORBETT O'MEARA

CIVIL ACTION NO. 00-73201

NEXTEL COMMUNICATIONS, INC.,
a Delaware corporation, and
MULLEN ADVERTISING, INC.,
a Massachusetts corporation,

Defendants.

JURY TRIAL DEMANDED

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FIRST AMENDED COMPLAINT AND JURY DEMAND



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I. THE PARTIES

1. Plaintiff, Stephen F. Gordon, is an individual operating his business out of his residence in Fort Gratiot, Michigan.

2. Nextel Communications, Inc. is a Delaware corporation having its principal offices in Reston, Virginia. Nextel provides wireless telecommunication services in Michigan.

3. Mullen Advertising, Inc. is a Massachusetts corporation having its principal offices in Wenham, Massachusetts. Mullen also maintains an office in Detroit, Michigan. Mullen provides advertising services in Michigan.



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II. JURISDICTION

4. This action arises under the copyright laws of the United States under 17 U.S.C. § 101, *et seq.*, and subject matter jurisdiction is based on 28 U.S.C. § 1338.

5. Venue is proper in this judicial district.



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III. BACKGROUND

6. Steve Gordon is a commercial artist specializing in medical illustrations.

7. Among the work he has created are dentist-patient consultation illustrations for use by dentists to explain dental procedures to their patients.

8. In 1984, Mr. Gordon made a collection of these illustrations in a ten-page booklet which he marketed to the dental community. He has received Copyright Registration VA 748-088 for these illustrations. Among the illustrations is one titled *ROOT CANAL* and another entitled *BRIDGE*. Mr. Gordon placed on these illustrations the copyright notice "© 1983 Stephen F. Gordon".

9. Later in 1995 he expanded the booklet to include 22 prints, for which he received Copyright Registration VA 748-089.

10. Mr. Gordon is the author of both the *ROOT CANAL* and *BRIDGE* illustrations.

11. Mr. Gordon has always been the owner of the *ROOT CANAL* and *BRIDGE* illustrations.

12. On July 1, 2000, Mr. Gordon observed a Nextel commercial on television related to a root canal. It was run repeatedly during an auto race broadcast in Michigan.

13. A predominant feature of the Nextel root canal commercial was an enlarged copy of Mr. Gordon's *ROOT CANAL* illustration with his copyright notice removed. Mr. Gordon's copyright notice is not seen on Mr. Gordon's *BRIDGE* illustration.



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14. MULLEN is the advertising agency responsible for the Nextel commercial.

15. Mr. Gordon has not authorized use of this illustration by Nextel, Mullen, or in any Nextel commercial.

16. On July 7, 2000, Mr. Gordon, through his attorneys, wrote Nextel regarding the root canal commercial and asked Nextel "to immediately cease further use of this commercial" and requested appropriate compensation.

17. On July 14, 2000, Nextel responded by admitting use of Mr. Gordon illustrations but arguing the copyright doctrine of fair use prevents Mr. Gordon from being entitled to any compensation from Nextel in connection with past, present or future presentation of the commercial.

18. Nextel and Mullen have continued to show the commercial in Michigan following Nextel's July 7th response.

19. Following Mr. Gordon's July 7th letter, the Nextel root canal commercial was placed on the Internet.



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IV. COUNT ONE -- COPYRIGHT INFRINGEMENT (35 U.S.C. § 501)

20. Nextel and Mullen prepared and ran the root canal commercial on television knowing of Mr. Gordon's illustrations used were copyrighted and that he had not given permission for their use in the preparation or use of the root canal commercial.

21. The *ROOT CANAL* and *BRIDGE* illustrations are original works created by Mr. Gordon and are owned by Mr. Gordon.

22. Both the *ROOT CANAL* and *BRIDGE* illustrations are works subject to protection under the Federal Copyright Act 17 U.S.C. § 101, *et seq.*

23. Mr. Gordon has complied with all aspects of the law of copyright, and secured the exclusive rights and privileges in to the copyrights of the *ROOT CANAL* and *BRIDGE* illustrations and has received from the Register of Copyrights the certificate of registration identified above.

24. Nextel and Mullen have infringed upon Mr. Gordon's copyrights for the *ROOT CANAL* and *BRIDGE* illustrations under 17 U.S.C. § 501 through the preparation and running of the Nextel root canal commercial on television.

25. Infringement by Nextel and/or Mullen is willful.

26. The acts by Nextel and Mullen will continue and will cause irreparable harm to Mr. Gordon unless restrained by the Court. There is no adequate remedy at law to compensate for the continued harm.



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**V. COUNT TWO – REMOVAL OF COPYRIGHT
MANAGEMENT INFORMATION (17 U.S.C. § 1202)**

27. Mr. Gordon has placed copyright management information in the form of a copyright notice on his *ROOT CANAL* illustration and *BRIDGE* illustration.

28. On information and belief, Nextel and/or Mullen have removed the copyright management information in violation of 17 U.S.C. § 1202(b)(1).

29. Mr. Gordon has not authorized the removal of copyright management information from the *ROOT CANAL* or *BRIDGE* illustrations.

30. Mr. Gordon has not authorized the distribution or public performance of the Nextel ad without this copyright management information.

31. After knowing that the copyright information on the *ROOT CANAL* illustration and *BRIDGE* illustration had been removed, Nextel and Mullen have distributed or publicly performed works or copies of works in violation of 17 U.S.C. § 1202(b)(3).

32. The acts by Nextel and Mullen will continue and will cause irreparable harm to Mr. Gordon unless restrained by the Court. There is no adequate remedy at law to compensate for the continued harm.



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VI. COUNT THREE -- COPYRIGHT INFRINGEMENT

33. On information and belief, Nextel and/or Mullen submitted a digitized derivative version of the Nextel root canal commercial to AdCritic.com to be placed on the Internet.

34. AdCritic.com is a commercial website providing services for advertising agencies with a goal to provide the advertising industry with a new medium on which to test TV advertising, hold focus groups and get industry-related news, all in one place.

35. AdCritic.com now runs the Nextel root canal commercial on its Internet site.

36. On information and belief, Nextel and/or Mullen have infringed upon Mr. Gordon's copyrights for his *ROOT CANAL* and *BRIDGE* illustrations under 17 U.S.C. § 501 by preparing derivative copies and inducing AdCritic to place them on the Internet.

37. Infringement by Nextel and/or Mullen is willful.

38. The acts by Nextel and/or Mullen will continue and will cause irreparable harm to Mr. Gordon unless restrained by the Court. There is no adequate remedy at law to compensate for the continued harm.



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VII. PRAYER FOR RELIEF

WHEREFORE, Stephen F. Gordon asks this Court to:

- A. enter judgment in his favor and against Nextel and Mullen;
- B. find Nextel and Mullen to have violated 17 U.S.C. § 501;
- C. find Nextel and Mullen to have violated 17 U.S.C. § 1202;
- D. enter an order permanently and preliminarily enjoining distribution of Mr. Gordon's works with copyright management information removed;
- E. enter an Order permanently and preliminary enjoining Nextel and Mullen from infringing the copyrights to Mr. Gordon's *ROOT CANAL* and *BRIDGE* illustrations;
- F. award actual or statutory damages for the violations of 17 U.S.C. § 501 at Mr. Gordon's election;
- G. award actual or statutory damages for the violations of 17 U.S.C. § 1202 at Mr. Gordon's election;
- H. find that the infringements of 17 U.S.C. § 501 are willful;
- I. award to Mr. Gordon his costs incurred in this action, including an award of reasonable attorneys fees under 17 U.S.C. § 505;
- J. award to Mr. Gordon reasonable attorney fees under 17 U.S.C. § 1203;
- K. order the impoundment and/or destruction of the infringing articles under 17 U.S.C. §§ 503 and 1203; and
- L. provide such other and further relief as the Court may deem appropriate and just.



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VIII. JURY DEMAND

Stephen F. Gordon requests a jury on all issues triable by a jury.

Respectfully submitted,

BROOKS & KUSHMAN P.C.

By: 

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Dated: August 11, 2000



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CERTIFICATE OF SERVICE

I certify that I served:

FIRST AMENDED COMPLAINT AND JURY DEMAND

on August 11, 2000 by:

☒ delivering (via hand-delivery)

☐ mailing (via First-Class mail)

a copy to:

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